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Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1972

No. 72-6361

TAMES B. BRYANT,

Petitioner,

v.

B.E. PRESCOTT, A. ROBERT ALDRIDGE, and LEONARD SHAPIRO,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION NOT PRINTED

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COUNTER STATEMENT OF THE CASE

In general, respondents accept petitioner's statement of the case. However, there are a few significant omissions.

The petitioner's original complaint and pretrial statement alleged that from May 1967 the petitioner thought that his total monthly payments had been reduced and

that he had been granted a moratorium on the payment of the second trust; but it was stipulated in the pretrial order[1] that in September of 1967 the petitioner wrote a letter to Louis Rudden in response to a telephone message, promising to pay the arrears on the second trust; the second trust upon which the foreclosure took place.

On the date that the case was called for trial below, the record reveals that the court had been notified by the petitioner's counsel of a lack of cooperation by the petitioner and the court inquired into the merits of the case and was informed by the petitioner's counsel that the petitioner was not then prepared to go forward and establish his claim of fraud (4 J).

When the case was called for trial below the following is exactly what took place:

> THE COURT: Is the plaintiff present, Mr. White?
>
> MR. WHITE: Yes he is, your Honor.
>
> THE COURT: What is the status of this matter now?
>
> MR. WHITE: Well, your Honor, I have talked to Mr. Collins before coming in here this morning. It is my understanding that Mr. Collins has no objection to a two-weeks continuance in this case in hope that the parties would reach a settlement.
>
> I would like to ask for a continuance of two weeks for that purpose. Mr. Bryant is here this morning. (3 J)

In respect to the consent of the defense, the following is exactly what the record shows:

> MR. COLLINS: Mr. White indicated that he had discussed this with your Honor, and in view of the

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[1] 2(c) of Record attached to the Petition.

fact that he was not prepared to proceed because of the lack of cooperation of his client that your Honor had suggested that if we didn't get it settled in two weeks, you were going to dismiss it. I said that I had no objection to that. (5 J)

ARGUMENT

This case does not involved any important question of Federal law that should be settled by this Court.

1. The maximum question that can be contended to be involved in this case is whether or not the District Court abused its discretion.

The following facts in this particular case clearly sustain the action of the trial court:

(a) The request for continuance was not made until the morning of the trial, until October 29, 1971, despite the fact that on July 15, 1971, the parties were advised that this case would be tried on October 29, more than ninety days previously. The record is devoid of any explanation for the plaintiff's waiting until the absolute last minute to make the request for continuance, thus totally disrupting the Court's schedule.

(b) The excuse offered to the trial court for the plaintiff being unprepared to proceed was a general allegation of the lack of cooperation on the part of the plaintiff himself with his counsel. Again, the record is devoid of any explanation, or attempted justification, for this lack of cooperation which can only be blamed upon the plaintiff himself.

(c) The lawsuit itself complained about a foreclosure, which foreclosure also was attributable to the plaintiff disregarding notices and his obligations and not receiving correspondence. As the agreed facts in the pretrial statement plainly show, as early as September, 1967, the

plaintiff knew he was in arrears on the second trust but he did not even bother to claim the registered letter giving him the legally required thirty-day notice of the foreclosure sale. So the trial court had before it a litigant who was as negligent about his lawsuit as the pleadings show he had been about the foreclosure that his lawsuit complained about.

(d) The record also revealed that the property had been sold by the District of Columbia because of delinquency of the plaintiff in failing to pay his real estate taxes and unless the property were promptly redeemed from the tax sale all of the interests of the parties in the property would be wiped out.

(e) No facts were given to the trial court to indicate that the requested continuance would have been of any avail. Not even in the Motion for Reconsideration of the Dismissal did the plaintiff-appellant offer any excuse for his previous lack of cooperation, nor indicate that he had learned any lesson.

(f) The defendants were in Court and ready for trial. When asked about the merits of the case, the plaintiff-appellant plainly indicated that he was not in a position to go forward and establish fraud; and on the merits of the case as they then appeared before the Court, the essential claim of the plaintiff was that he had thought, or had been misled to believe, that from May, 1967, he had been granted a moratorium of the payment of the second trust and yet in the pretrial statement itself it was stipulated that in September of 1967 the plaintiff-appellant, in response to a telephone message, wrote a letter promising to pay the arrears of the second trust; it was further stipulated in the pretrial statement that he didn't pay one cent thereafter.

This obviously showed to the trial court the utter weakness of the plaintiff's case.

(g) The actual Order was consented to by counsel for the plaintiff and it gave the plaintiff a two-week continuance for the purpose of reaching settlement and that was precisely what the plaintiff's counsel asked of the trial court.

In these circumstances it can hardly be claimed that this case presents a ruling that should be reviewed by this Court. The Court's attention is invited to the fact that the Motion of the petitioner to reconsider did not contain any adequate explanation for the plaintiff's failure to be ready for trial and contains nothing to indicate that such failure was other than the product of neglect.

2. The record in this case plainly supports the proposition that the petitioner made an intelligent decision to seek settlement of this suit rather than a judicial ruling, the trial court granted the respondent's request and signed the consent order and now the petitioner would invoke the aid of this Court to relieve him of the consequences of the granting of his own request.

3. In the U.S. Court of Appeals for the District of Columbia Circuit, the Court, without a formal opinion, decided this case under its summary calendar procedure and argument. The respondent submits that it is significant that neither Mr. Justice, Tom Clark, nor Judges McGowan and Robb, the Circuit judges, felt that the issues in this case occasioned any need for opinion but that they fully considered the issues and affirmed with no dissent whatsoever.

CONCLUSION

In conclusion, it is respectfully submitted that this case does not call for any re-examination of the law set forth in the Link case and does not call for the granting of the Writ of Certiorari.

Respectfully submitted,

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